

11 PAUL BOSCHETTO, No C-06-1390 VRW
12 Plaintiff, ORDER
13 v
14 JEFFREY D HANSING, FRANK BOUCHER
CHRYSLER DODGE-JEEP, GORDIE
BOUCHER FORD and BOUCHER
AUTOMOTIVE GROUP,
16 Defendants.

1 under FRCP 12(b)(2) for lack of personal jurisdiction. Doc ##4, 9.
2 For the reasons stated below, the court GRANTS both motions.
3

4 I

5 On August 1, 2005, plaintiff alleges that Hansing posted
6 a 1964 Ford Galaxie for auction on eBay.com and that Hansing
7 advertised the car as an "R Code" in "awesome condition," "recently
8 rebuilt" and "ready to be driven." Compl, ¶ 6. Plaintiff contends
9 that he relied on this description when submitting a bid of \$34,106
10 and that eBay later notified him that his bid had succeeded. Id,
11 ¶¶ 7, 8. After plaintiff paid for the car, Hansing instructed him
12 by email that he could pick it up from Frank Boucher Chrysler Dodge
13 Jeep, the Wisconsin dealership where Hansing worked. Id, ¶¶ 5, 10.
14 Frank Boucher Chrysler Dodge Jeep and the other defendant
15 dealerships apparently constitute a single automotive group. Doc
16 #9-2, ¶ 2. Plaintiff hired a delivery company to transport the
17 vehicle to California and received it on September 15, 2005.
18 Compl, ¶¶ 11-12. Plaintiff then discovered that the vehicle was
19 defective and was not an "R Code" as advertised. Id, ¶ 12.
20

21 II

22 A plaintiff has the burden of establishing that the court
23 has personal jurisdiction over a defendant. Doe v Unocal Corp, 248
24 F3d 915, 922 (9th Cir 2001). In assessing a plaintiff's showing,
25 the court may consider evidence presented in affidavits and other
26 evidence procured during discovery. But when the court acts on the
27 motion without holding an evidentiary hearing, as here, the
28 plaintiff need only make a prima facie showing of jurisdictional

United States District Court

For the Northern District of California

1 facts to withstand the motion to dismiss. Id. When not directly
2 controverted, plaintiff's version of the facts must be taken as
3 true and conflicts between the facts contained in the parties'
4 affidavits should be resolved in favor of plaintiff. Id. The
5 facts here are not in material dispute.

6 A federal court may exercise personal jurisdiction over a
7 defendant when such jurisdiction comports with the law of the state
8 in which the court sits and with the requirements of due process.
9 Lee v City of Los Angeles, 250 F3d 668, 692 (9th Cir 2001).

10 "California [law] permits the exercise of personal jurisdiction to
11 the full extent permitted by due process." Bancroft & Masters, Inc
12 v Augusta Natl, Inc, 223 F3d 1082, 1086 (9th Cir 2000); Cal Code
13 Civ Pro § 410.10. Due process requires a defendant to have certain
14 minimum contacts with the forum state so that permitting the suit
15 would not offend "traditional notions of fair play and substantial
16 justice." International Shoe Co v Washington, 326 US 310, 316
17 (1945) (quoting Milliken v Meyer, 311 US 457, 463 (1940)) (internal
18 quotation marks omitted). A defendant's "conduct and connection
19 with the forum state" must be such that the defendant "should
20 reasonably anticipate being haled into court there." World-Wide
21 Volkswagen v Woodson, 444 US 286, 297 (1980).

22 General jurisdiction is a type of personal jurisdiction
23 that exists when a defendant has substantial or continuous and
24 systematic contacts with the forum state. Bancroft & Masters, 223
25 F3d at 1086. When such contacts exist, a defendant may be haled
26 into court in that state "in any action, even if the action is
27 unrelated to those contacts." Id. The standard for establishing
28 general jurisdiction is "'fairly high,' and requires that the

United States District Court

For the Northern District of California

1 defendant's contacts be of the sort that approximate physical
2 presence." Id (quoting Brand v Menlove Dodge, 796 F2d 1070, 1073
3 (9th Cir 1986)) (citation omitted).

4 Absent general jurisdiction, a court still may exercise
5 specific jurisdiction. The Ninth Circuit has established a three-
6 prong test for establishing specific jurisdiction:

- 7 (1) The non-resident defendant must purposefully
8 direct his activities or consummate some
9 transaction with the forum or resident
10 thereof; or perform some act by which he
11 purposefully avails himself of the privilege
12 of conducting activities in the forum,
13 thereby invoking the benefits and protections
14 of its laws;
- 15 (2) [T]he claim must be one which arises out of
16 or relates to the defendant's forum related
17 activities; and
- 18 (3) [T]he exercise of jurisdiction must comport
19 with fair play and substantial justice, i.e.
it must be reasonable.

20 Schwarzenegger v Fred Martin Motor Co, 374 F3d 797, 802 (9th Cir
21 2003). Although plaintiff bears the burden of establishing the
22 first two prongs, defendant bears the burden on the third prong.
23 See *id.*

A

24 Plaintiff argues the court may have general jurisdiction
25 over Hansing if discovery shows that he previously sold other cars
26 to California residents. Doc #17-1 at 5. Although plaintiff does
27 not contest the Wisconsin dealerships' assertions that they are not
28 incorporated in California and have never sold an automobile there
(Doc #9-2, ¶¶ 4, 11), he nonetheless suggests that the dealerships'
website might be sufficient to establish general jurisdiction over
them. Doc #16-1 at 6.

1 Plaintiff's general jurisdiction arguments fail to
2 persuade. Plaintiff admits that he "has no direct knowledge"
3 whether either the Dealership or Hansing have 'continuing or
4 systematic' contacts with the State of California." Id. Even if
5 plaintiff could demonstrate past sales by Hansing to California,
6 occasional sales to California residents are insufficient to create
7 general jurisdiction. See Brand, 796 F2d at 1073. And plaintiff
8 has not marshaled any evidence to contest the Wisconsin
9 dealerships' assertion that they have never conducted any business
10 in California via their website. Doc #9-2, ¶ 11. Accordingly,
11 plaintiff has not satisfied the fairly high burden for establishing
12 general jurisdiction.

B

14 Plaintiff's better argument, of course, is that the court
15 may exercise specific jurisdiction over Hansing because he
16 contracted to sell a car to a California resident. Doc #17-1 at 6.
17 Further, plaintiff asserts that Hansing acted as the Wisconsin
18 dealerships' agent and employee in selling the car, thereby
19 permitting the court to exercise jurisdiction over them. Doc #16-1
20 at 8; Compl, ¶ 5. Hansing's actions form the only asserted basis
21 for exercising specific jurisdiction over the Wisconsin
22 dealerships. This argument need not long detain us. Even if
23 Hansing acted as an agent, which the dealerships dispute, he did
24 not as will presently be explained, purposefully direct his actions
25 toward California. Without that showing, the court cannot exercise
26 jurisdiction over the Wisconsin dealerships.

27 | 44

28 | 44

1 Plaintiff argues that the Ninth Circuit's decision in
2 Data Disc, Inc v Systems Technology Associates, 557 F2d 1280 (9th
3 Cir 1977), militates in favor of finding personal jurisdiction over
4 Hansing. Doc #17-1 at 6. But Data Disc is hardly instructive
5 here. In that case, the court found personal jurisdiction because
6 "at least some of the negotiations took place at the Data Disc
7 plant in Sunnyvale, California * * *." Id at 1284. To the
8 contrary here, negotiations in this case took place only over the
9 Internet and never physically occurred in California.

United States District Court

For the Northern District of California

1 In defining whether the defendant had sufficient minimum
2 "contacts with the forum," Cybersell relies on CompuServe, Inc v
3 Patterson, 89 F3d 1257 (6th Cir 1996). There, the Sixth Circuit
4 found jurisdiction over defendant Patterson proper because he
5 "electronically transmitted thirty-two master software files to
6 CompuServe, which CompuServe stored and displayed to its
7 subscribers. * * * In effect, Patterson used CompuServe as a
8 distribution center to market his software." Cybersell, 130 F3d at
9 417 (summarizing CompuServe, 89 F3d at 1264). Additionally, the
10 relationship "was intended to be ongoing in nature; it was not a
11 'one-shot affair.'" Compuserve, 89 F3d at 1265.

12 In the present case, Hansing's contacts with the forum
13 state are not nearly as repetitive or comprehensive as were
14 Patterson's contacts in Compuserve. Although Hansing used eBay to
15 market the automobile, eBay acted not as a "distribution center"
16 but rather as a virtual forum for the exchange of goods. And the
17 relationship between plaintiff and Hansing was exactly a "one-shot
18 affair." While eBay is headquartered in California, this contact
19 is irrelevant because this dispute only involves two eBay users and
20 not eBay itself.

21 Exercising personal jurisdiction would be improper here
22 because Hansing's actions were not purposefully directed at the
23 forum state. Auction sales on eBay are "random" and "attenuated,"
24 and "the choice of [the] highest bidder is * * * beyond the control
25 of the seller;" hence, an overwhelming majority of courts have held
26 that an eBay seller does not purposefully avail himself of the
27 privilege of doing business in a forum state absent some additional
28 conduct directed at the forum state. See The Winfield Collection,

United States District Court

For the Northern District of California

1 Ltd v McCauley, 105 F Supp 2d 746, 749 (ED Mich 2000); Metcalf v
2 Lawson, 802 A 2d 1221 (NH 2002) (finding no personal jurisdiction
3 over an eBay seller with no control over the ultimate winner and no
4 ability to exclude buyers from specific jurisdictions); Karstetter
5 v Voss, 184 SW 3d 396 (Tex Ct App 2006) (finding no personal
6 jurisdiction over an eBay seller who rejected a buyer's offer to
7 preempt the auction and instead let the bidding process conclude),
8 Action Tapes, Inc v Ebert, 2006 US Dist LEXIS 4958 (ND Tex 2006)
9 (finding no personal jurisdiction over an eBay seller where the
10 traditional auction process was not altered or circumvented in any
11 manner); United Cutlery Corp v NFZ, Inc, 2003 US Dist LEXIS 21664
12 (D Md 2003) (finding no personal jurisdiction over an eBay seller
13 whose manifested intent was to sell to the highest bidder).

14 Although research did indicate two opinions that diverge
15 from the prevailing view, their analyses do not persuade the court.
16 In Malcolm v Esposito, the dispute arose from a single eBay sale to
17 a Virginia resident. 63 Va Cir 440, 446 (Va Cir Ct 2003).
18 Nonetheless, the court found jurisdiction proper because defendants
19 were commercial sellers with 213 sales on eBay and who represented
20 that they had local, national and international eBay customers.

21 Id.

22 This case is distinguishable because plaintiff does not
23 allege that Hansing or the Wisconsin dealerships conducted business
24 over eBay with any frequency. To the contrary, plaintiff marshaled
25 no evidence to contest the dealerships' assertion that they have
26 never conducted business in California via the Internet. Doc #9-2,
27 ¶ 11.

28 //

1 In Tindall v One 1973 Ford Mustang, the dispute again
2 arose from a single eBay sale. 2006 WL 1329168, *1 (ED Mich 2006).
3 The court found jurisdiction proper because in "selling the car to
4 a Michigan resident, Defendants have transacted business in the
5 state, giving this Court personal jurisdiction over them * * *."
6 Id at *4.

7 While more factually analogous to this case, Tindall is
8 not persuasive because the court provided no reasoning to support
9 its aforementioned conclusion. While other courts at least
10 recognize that the Internet and particularly an eBay transaction
11 may alter the jurisdictional analysis, the Tindall court seemingly
12 analogized the situation to a "phone call or written correspondence
13 to the forum." Id (quoting General Motors Corp v Ignacio Lopez de
14 Arriortua, 948 F Supp 656, 663 (ED Mich 1996)). The analogy is
15 flawed because phone calls and written correspondence by nature
16 must be specifically targeted to a resident of the forum, while an
17 advertisement on eBay lacks such focus.

18 Looking to whether Hansing engaged in some additional
19 conduct directed at the forum, the court finds that plaintiff has
20 alleged none. Only after the auction and alleged fraud had been
21 committed did Hansing learn that the car was California-bound and
22 did he email plaintiff regarding delivery. Accordingly, the
23 "nature and quality" of Hansing's conduct over the Internet are
24 insufficient to permit exercising personal jurisdiction in
25 California. Significantly, plaintiff -- not Hansing -- made the
26 arrangements for pick-up of the vehicle in Wisconsin and dispatched
27 the shipper to that state. Unlike the usual eBay transaction in
28 which the seller arranges for shipment and sets in motion the

1 events that land the product in the buyer's locale, this case is
2 different.

3 This fact alone, although important enough, does not
4 warrant finding that the court lacks personal jurisdiction over
5 Hansing. Perhaps a greater significance lies in what too easy a
6 test of personal jurisdiction could do to Internet commerce of the
7 kind involved here. Assume an eBay seller would be subject to
8 personal jurisdiction simply by consigning an item to eBay that is
9 bought by some denizen of a faraway forum. The friction on e-
10 commerce of such a rule would slow the flow of transactions --
11 perhaps significantly. No doubt, Boschetto suffers considerable
12 inconvenience in going to Wisconsin to assert his claim. But he
13 bought the car knowing it was in Wisconsin and chose to do so
14 without an inspection by himself or a third party who could have
15 been engaged for that purpose. Under the facts here, due process
16 suffers no offense by holding that this court lacks personal
17 jurisdiction over defendants.

6

19 Plaintiff alternatively requests that "limited discovery
20 be allowed to determine whether Hansing had sufficient contacts to
21 form the basis for jurisdiction" (Doc #17-1 at 7-8) and "to
22 determine whether Hansing was acting as either the actual or
23 ostensible agent for [the] dealership" (Doc #16-1 at 9). The court
24 has broad discretion to permit or deny discovery to determine
25 whether personal jurisdiction exists. See Data Disc, 557 F2d at
26 1285 n1. Here, plaintiff merely speculates without any support
27 that discovery might allow him to demonstrate that jurisdiction in
28 //

1 California is proper. The court therefore DENIES plaintiff's
2 request for discovery.

3

4 III

5 Accordingly, the court GRANTS Hansing's motion to dismiss
6 (Doc #4) and the Wisconsin dealerships' motion to dismiss (Doc #9).
7 The clerk is DIRECTED to CLOSE the file and TERMINATE all pending
8 motions.

9

10 IT IS SO ORDERED.

11 
12

13 VAUGHN R WALKER
14 United States District Chief Judge

15

16

17

18

19

20

21

22

23

24

25

26

27

28